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SUBJECT: COURT CASES UPDATE -- ZIMBABWE'S STRESSED JUDICIARY
STILL DELIVERING

REF: (A) Harare 1787 (B) Harare 1722 (C) Harare 1594 (D)
Harare 633 (E) 03 Harare 1935

1. (SBU) SUMMARY: Several noteworthy cases over the last few months suggest the continuing vitality of elements within Zimbabwe's beleaguered judiciary despite political and professional pressures. Courts dismissed charges in the Cain Nkala murder trial, for example, and ordered Information Minister Jonathan Moyo to pay an independent newspaper publisher damages for defamatory remarks. Other politically sensitive cases, however, languish indefinitely, essentially denying justice through prejudicial delays. And despite a growing string of adverse decisions, the GOZ continues its strategy of harassing its opponents through litigation and ignoring many decisions against it. Nonetheless, Zimbabwean courts retain a surprising level of trust among the general public and could play a critical role in national recovery should political turmoil here recede. END SUMMARY.

Rulings Against the Government

2. (U) The Tsvangirai acquittal last month was not the only politically sensitive case in which Zimbabwean courts ruled against the GOZ recently --

-- Nkala Case Dismissed: High Court Judge Sandra Mungwira on August 5 dismissed all charges against MDC MP Fletcher Dulini Ncube and five other MDC activists charged in the murder of ruling party activist Cain Nkala. The dismissal concludes a trial that lasted nearly three years and involved a "trial within a trial" (ref E) in which police confessions were found to have been coerced. The exonerated defendants indicated they may sue the GOZ over their treatment in prison.

-- Defamation Damages Against Minister: In July, the High Court ordered Information Minister Jonathan Moyo to pay Z\$2.5 million (US\$450) damages for defamation to the Associated Newspapers of Zimbabwe, the publisher of the shuttered Daily News. The damage award, which related to defamatory statements made by Moyo and Deketeke (alleged to be the author of the weekly, vicious pseudonymous Nathaniel Manheru columns) against staff members of the Daily News (TDN), was just the latest in a string of TDN-related decisions against the GOZ.

Cases Against the Government

3. (SBU) The courts are entertaining other politically significant cases that put the GOZ and the ruling party under pressure --

-- Wrongful Death Claim Against Minister: Minister Without Portfolio in the President's Office (and former Minister of Youth Development, Gender and Employment Creation) Elliot Manyika faces a wrongful death claim of Z\$135 million (US\$22,000) filed by the survivors of a murdered MDC activist. Manyika allegedly shot two activists during the Zengeza parliamentary by-election campaign (ref D). Plaintiffs' attorney told us that Manyika would have been prosecuted but for the personal intervention of Police Commissioner Chihuri. The attorney told us that the Minister invited Gunzvezve and the family of Chinozvina to meet with him for an out of court settlement but no agreement had been reached. A trial date has yet to be set.

-- Bennet Appeals: MDC MP Roy Bennet is pursuing two court appeals of his parliamentary "conviction" for pushing down the Minister of Justice. A constitutional appeal is before the Supreme Court after being dismissed by the High Court while an appeal revolving around principles of natural justice is still before the High Court. Conclusive rulings are not expected in either action soon and Bennet continues to serve his sentence "with labor" under arduous conditions. (Note: MDC MP and Shadow Minister for Justice David Coltart told us that the party was seeking advocacy on Bennet's behalf by the Inter-Parliamentary Union and sitting

counterparts in other legislatures, including the U.S. Congress.)

-- Election Challenges Drag On: None of the 38 election petitions originally filed in the High Court contesting outcomes of the 2000 parliamentary elections has been finally resolved to date. In a typical example, the Supreme Court on November 5 reserved judgment in the election petition of the Minister of State for Science and Technology, Olivia Muchena, who had appealed a High Court nullification of her election as MP for Mutoko South. Last month, the Supreme Court reportedly dismissed the appeals of ruling party MPs Elleck Mkandla and Jaison Machaya against High Court rulings in favor of MDC challengers in January 2003. Nonetheless, the ruling party MPs are seeking reinstatement of the appeals and the Speaker of the Parliament has yet to act on MDC demands that the seats be declared vacant. (Note: In response to the courts' failure to resolve these cases, Zimbabwe Lawyers for Human Rights filed an action with the African Commission for Human Rights in Dakar, arguing that the inaction violated the African Charter. The action, which was filed in August, awaits a GOZ response.)

Resettled Farmers In Court: Attorney contacts told us that they are increasingly involved in litigation on behalf of resettled farmers in disputes with their neighbors. In several cases, the courts have been granting "A1" farmers (people resettled under small-holder schemes) favorable orders allowing them to remain on their land in the face of attempts by party stalwarts to evict them. Courts have issued preliminary orders enjoining authorities from preventing the return of settlers burned out of their homes by authorities last month (ref C). The lawyers advise us that some, though not all, of the settlers have returned.

Tsvangirai Acquittal to be Appealed?

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14. (SBU) Meanwhile, the GOZ gives every indication that it will continue its use of the courts to harass its critics and the opposition. According to the October 31 edition of the state-owned newspaper "the Herald", acting attorney general Bharat Patel said that the GOZ intended to appeal against the judgment in the Tsvangirai treason trial. Patel was quoted as saying that the appeal would be filed to the Supreme Court by mid November. Tsvangirai's attorneys, however, have not yet received any information from the state concerning its intentions to appeal. On November 3, Tsvangirai appeared before a local magistrate, who set a

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hearing for January 13 on the second treason charge, which concerned Tsvangirai's statements associated with mass demonstrations. According to MDC sources, the January hearing may involve the setting of bail and possible seizure again of Tsvangirai's passport, although the case is reportedly even weaker than the first charge.

Courts Under Pressure .

15. (SBU) Often viewed as subservient to the executive branch, Zimbabwe's judiciary still contains elements capable of rendering significant judgments against the government. On its face, for example, Mungwira's judgment in the Nkala murder trial not only strengthens the position of judges but also that of victims of unlawful arrests. The TDN defamation holding is just the latest in a series of decisions supporting freedom of the press. Dismissal of the ruling party election appeals likewise follows a line of rulings against the GOZ in election contests. If given effect, such judgments could have had far reaching implications for the future conduct of the police, the country's media, and GOZ election administration. Until executive-controlled institutions like the police and Media and Information Commission show willingness to implement such decisions, however, such cases offer little more than rhetorical fodder for regime critics - largely Pyrrhic victories.

16. (SBU) Minister Manyika's situation is symptomatic of deficiencies in both the court system and the election environment. His interest in settlement is interesting; according to Zimbabwean culture if a person causes the death of an individual he/she must seek forgiveness from the aggrieved family by paying a token sum as reparation (kuripa). Failure to do so may result in a curse being imposed upon that individual and his/her family (ngozi). Perhaps more significantly, the offer may reflect his personal and ruling party interest in resolving the matter away from the glare of public spotlight, especially in view of regional scrutiny invited by the GOZ for upcoming elections. Essentially the ruling party's publicly

prominent national campaign manager several months ago, Manyika's star appears to be waning of late.

17. (SBU) There remains an element of fear within the judiciary. The example of former Judge President of the Administrative Court Justice Michael Majuru is illustrative: he publicly gave a detailed account from South Africa earlier this year about his forced resignation and exile to South Africa after constant harassment from ruling party supporters and direct pressure from the Minister of Justice in connection with the controversial Daily News case.

18. (SBU) Economic pressure on the largely underpaid bench is an additional factor. Instruments setting out the terms under which judges take property under land reform, for example, reportedly have clauses giving the state unconditional authority to reclaim the property. According to a former president of the Law Society, all but five judges on the Supreme Court and High Court have received farms under land reform. Interestingly, the state media earlier this month fingered Judge Garwe, who rendered the surprise Tsvangirai acquittal, as having failed to sell the grain from his farm to the Grain Marketing Board as required - a precursor, perhaps, to his farm being reclaimed by the state.

19. (SBU) Executive branch pressure and harassment only compound the myriad challenges imposed on the judiciary by the economy's collapse. Emigration takes a toll, as many jurists find their skills in demand in neighboring countries with similar legal systems. Declining real budgets are sapping the judicial system's infrastructure. Once impressive courtrooms and offices are dilapidated, libraries are depleted and obsolete, and backlogs are growing as resource constraints have delayed plans to computerize indefinitely.

. But Still Commanding Respect

10. (SBU) Long delays are becoming the norm in politically sensitive cases here. Nonetheless, as the court's ever-growing workload attests, Zimbabweans of all political stripes continue to view the courts as a resort of some value. Rule of law remains important to Zimbabweans, a fact not lost on a GOZ that goes to great lengths publicly to legitimize its actions legalistically, even as it ignores selected judicial pronouncements. Local newspapers often read like a court docket, with innumerable reports on criminal and civil cases involving prominent political and business figures. Reports of conclusive disposition of any cases, however, seem rare.

11. (SBU) Although it remains unclear whether or not the judgment in Tsvangirai's treason trial was a political one, Garwe's judgment has further bolstered the faith of many in Zimbabwe's judiciary. Notwithstanding the likely political and economic pressure he was under, he ruled even-handedly throughout the trial, castigated the state's key witness Ari Ben Menashe repeatedly, and delivered a judgment that most local attorneys characterized as sound.

12. (SBU) In spite of deteriorating conditions and numerous constraints, the judiciary retains a strong measure of public respect. An August 2004 survey conducted in Zimbabwe by the Mass Public Opinion Institute and Michigan State University disclosed that 64 percent of respondents had "a very great deal/a lot of trust" in the courts - the highest level of trust among 12 national institutions/offices. Indeed, the judicial system's residual talent, integrity, and courage - and the trust it still engenders - will be important in sustaining Zimbabweans' hope for the future and could be an important foundation to support national recovery should political conditions improve.

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